IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

WA.No. 2259 of 2005(A)

AGAINST THE JUDGEMENT/ORDER IN WPC.20162/2004 Dated 26/07/2005
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APPELLANT:

K.A.SIMON, KALATHINGAL HOUSE,
KANAKAMALA P.O. THRISSUR DISTRICT.

BY ADV. SRI.N.N.SUGUNAPALAN (SR.)
SRI.S.SUJIN

RESPONDENTS: RESPONDENTS.
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1. M.L.MARY, W/O.KOCHUPOULOSE,
KALATHINGAL HOUSE, KANAKAMALA P.O.
THRISSUR DISTRICT.

2. K.K.PAULSON, KALATHINGAL HOUSE,
KANAKAMALA P.O. THRISSUR DISTRICT.

3. K.K.BABU, KALATHINGAL HOUSE,
KANAKAMALA P.O. THRISSUR DISTRICT.

4. K.K.JENNY, D/O.LATE KOCHUPOULOSE AND
W/O.U.K.POULOSE,URAKKADAN HOUSE, THABORE P.O.
MOOKANNUR, ERNAKLAM DISTRICT.

5. K.K.MOLLY, W/O.K.A.KOCHIPULOSE &
W/O.U.T.MATHEW, UKKEN HOUSE, KAKKULISSERY P.O.
IRANIKULAM, MALA VIA, THRISSUR DISTRICT.

6. K.K.KOCHURANI, W/O.KOCHU PAULOSE &
W/O.M.J.VARGHESE, MADAVANA HOUSE, MANAKKULANGARA,
P.O. THRISSUR DISTRICT.

**7. M.V.ANNIE, W/O.LATE K.A.XAVIER,
KALATHINGALHOUSE,PERAMBRA P.O.
THRISSUR DISTRICT.**

**8. RAJAN XAVIER, S/O.LATE K.A.XAVIER,
KALATHINGAL HOUSE, PERAMBRA P.O. THRISSUR DISTRICT**

**9. SHEELA XAVIER, D/O.LATE K.A.XAVIER,
KALATHINGAL HOUSE, PERAMBRA P.O. THRISSUR DIST.**

**10. M.V.MARY, W/O.LATE K.A.KOCHANTHONY,
KALATHINGAL HOUSE, KANAKAMALA P.O. THRISSUR DIST.**

**11. K.K.SAJU, S/O.K.A.KOCHANTHONY,
KALATHINGAL HOUSE, KANAKAMALA P.O.
THRISSUR DISTRICT.**

**12. K.K.JESSY, D/O.LATE K.A.KOCHANTHONY,
W/O.M.L.PETER, MURINGATHARA HOUSE, KUNDAVARA,
THRISSUR DISTRICT.**

**13. ASSISTANT EDUCATIONAL OFFICER,
CHALAKKUDY, THRISSUR DISTRICT.**

**14. DEPUTY DIRECTOR OF EDUCATION,
THRISSUR.**

**15. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM.**

**16. THE STATE OF KERALA, REPRESENTEDBY THE
CHIEF SECRETARY TO GOVERNMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM.**

**BY ADV. SRI.N.P.SAMUEL FOR R1 TO R12
SRI.B.K.PURUSHOTHAMAN
GOVERNMENT PLEADER SRI.BENNY GERVASIS FOR R13 TO 16**

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 06/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S.Radhakrishnan
&
Antony Dominic, JJ.
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W.A.No.2259 of 2005
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Dated this the 6th day of June, 2007.

JUDGMENT

Radhakrishnan,J.

Writ Petition was preferred by the appellant seeking a writ of certiorari to quash Ext.P8 order passed by the Government and also for consequential reliefs. The issue involved in the Writ Petition is with regard to the right of management of an L.P. School and its properties belonged to one Kalathingal Anthony. He was also managing the School. Anthony has four sons. Petitioner is the youngest son. Anthony executed Ext.P1 Will in respect of all his properties which include a School building also. As per the terms of the Will, the School property will vest in one-fourth shares on the sons of Anthony while

management of the School claims to be vested on the petitioner. On the basis of a joint application made by the petitioner and Anthony during the life time of Anthony, the Department transferred management of the School in favour of the petitioner on 12.12.1965 and the petitioner continued to be the Manager even after the death of Anthony. Since the petitioner was a Teacher, he transferred his managership over the School in the year1968 in favour of his sister Annakutty. Annakutty continued as Manager of the School for 12 years. Later, management was transferred to Kochupoulose, another brother of the petitioner. In the year 1987 the petitioner retired from service and the managership was transferred in his favour and transfer was approved by the Department. The other three brothers of the petitioner raised a claim that they are also entitled to equal shares over the managership of the School and that a Corporate Educational Agency was formed when the testator passed away.

2. Government, when the matter came before it, gave a direction to the Deputy Director of Education to convene a meeting of all the legal heirs and to take a decision as per majority for the constitution of the Corporate Educational Agency and for appointment of Manager of the School. Aggrieved by Ext.P8 order, petitioner filed the Writ Petition. Learned single Judge did not interfere with that part

of Ext.P8 by which the Deputy Director of Education was directed to convene a meeting of the petitioner and respondents 1 to 12 to take a decision as to whether the By-laws of the Corporate Educational Agency should be approved and also as to who should be the Manager of the School. Learned single Judge did not approve Ext.P8 to the extent it deals with the validity or otherwise of the sale deed allegedly executed by the petitioner and the learned single Judge vacated the finding of the Government in Ext.P8 regarding the validity of the sale deed observing that that issue should be decided in appropriate other proceedings to be initiated by any of the parties.

3. Counsel for the respondents submitted that an educational agency has already been constituted and that has been approved. In the circumstances, rest of the findings entered by the Government which were confirmed by the learned single Judge are not to be disturbed. Counsel for the petitioner has stated that he has preferred a suit, O.S.No.142 of 2007 at Irinjalakuda Court for a declaration that he is entitled to get the managership of the School on the strength of the Will. Since disputes regarding the various terms of the Will is being considered by the Civil Court, we are not expressing our final opinion on the terms of the Will. But we make it clear that the views expressed by this Court as well as by the Government will have no

bearing with regard to the issues pending consideration by the Civil Court.

With the above observations, this Writ Appeal is disposed of.

K.S.Radhakrishnan,
Judge.

Antony Dominic,
Judge.

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